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Name: John J. Zimmerman  
Firm: USPTO Group Art Unit 1775  
Fax: 1-571-273-8300  
Total Number of Pages (including this cover page)  
From: Cynthia McGarvie  
Date: November 21, 2005  
File: Shape Technologies  
File No.: 104-2877

Message:

**PLEASE SEE ATTACHED CORRESPONDENCE**

Attachments

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**FOWLER WHITE BOGGS BANKER P.A.**

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**NOV 22 2005**

Atty Docket: P042877-06UT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

Peter A. Jardine

Date: November 21, 2005

Serial No.: 10/734,812

Group Art Unit: 1775

Filed: December 11, 2003

Examiner: John J. Zimmerman

For: SHAPE MEMORY DEVICE HAVING TWO-WAY CYCLICAL SHAPE MEMORY  
EFFECT DUE TO COMPOSITIONAL GRADIENT AND METHOD OF MANUFACTURE

**VIA FACSIMILE: 1-571-273-8300**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PETITION TO SUBMIT AN AFFIDAVIT UNDER 37 CFR § 1.132**  
**LAURENCE MCDONALD SCHETKY**

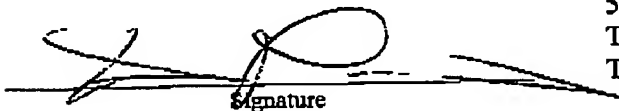
The attached affidavit of Laurence McDonald Schetky is submitted to support the previous Affidavit of Peter Jardine, and is used to traverse the rejections based on the Hill reference.

In the event the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge the underpayment to Deposit Account No. 500864.

I hereby certify that this correspondence is being facsimile transmitted to the USPTO, Examiner John J. Zimmerman, Group Art Unit 1775, (571) 273-8300 on the date indicated below.

Christopher Paradies, Ph.D

Name of applicant, assignee or  
Registered Representative

  
Signature

November 21, 2005

Date of Signature

Respectfully submitted,



Christopher Paradies, Ph.D.

Registration No.: 45,692

FOWLER WHITE BOGGS BANKER

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Enclosure

FROM : Memry-Schetky

FAX NO. : 207-236 7784

Nov. 17 2005 07:10PM P2

## Affidavit

State of ME  
County of KNOX

BEFORE ME, the undersigned authority, a Notary Public of the State of Oregon, this day personally appeared L. McD. Schetky, Ph.D., P.E., Affiant, who, upon being first sworn by me, depose and stated the following:

1. Affiant's full name is Lawrence McDonald Schetky, and his residence is:  
318 Molyneaux Rd,  
Camden, Maine 04843
2. Affiant's business address is:  
3 Berkshire Blvd  
Bethel, ME 06801
3. Affiant is a former Technical Director of The International Copper Research Association.
4. Affiant initiated research efforts on copper based Shape Memory alloys, which were carried out in universities in the United States, Australia, Belgium and the United Kingdom and investigated copper-based shape memory alloys, such as Cu-Zn, Cu-Zn-Al, Cu-Al-Ni, Cu-Mn and others.
5. Affiant has over four decades of research experience in copper based Shape Memory alloys.
6. Affiant is familiar with the basic metallurgy of CuAu alloys.
7. Affiant states that it is well known that Au and Cu form a completely miscible series of disordered solid solutions, and the alpha phase, which forms on solidification, has the fcc (A1) structure isotypic with copper.
8. Affiant states that it is well known that at low temperatures, various ordering of the basic lattice are found, which in some cases is associated with a slight distortion of the basic cubic symmetry to tetragonal or orthorhombic symmetry.
9. Affiant states that it is well known that such a system must exhibit a martensitic phase transformation in order to exhibit the shape memory effect of a Shape Memory alloy.
10. Affiant states that there is no evidence that any combination of Au and Cu is capable of exhibiting a martensitic phase transformation; therefore, in the opinion of Affiant, a metallurgist, who works with Shape Memory alloys and possesses ordinary skill, would know that there is no possibility of any combination of Au and Cu exhibiting the shape memory effect.

FURTHER, AFFIANT SAYETH NAUGHT.

Lawrence McDonald Schetky  
Signature of Affiant

SUBSCRIBED and SWORN TO before me this 17 day of Nov, 2005, by Serena M. Wilson who is personally known to me or who did produce the following identification ME Drivers License

Serena M. Wilson  
NOTARY PUBLIC

My Commission Expires: Feb. 18, 2012

SERENA M. WILSON  
Notary Public, Maine  
My Commission Expires February 18, 2012